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Rebecca Hanmer
Regional Administrator
U.S. Environmental Protection Agency - Region VIII
999 18th Street - Suite 500
Denver, CO 80202

ADMINISTRATIVE
RECORD

Henry Falk, M.D., M.P.H.
Assistant Administrator
ATSDR
1600 Clifton Road (E28)
Atlanta, GA 30333

RECEIVED

AUG 17 2000

USEPA RA'S OFFICE

Re: Vasquez Boulevard/I-70 Superfund Site, Denver, Colorado

Dear Ms. Hanmer and Dr. Falk:

I am writing to you to express the concerns of ASARCO Incorporated with respect to the procedures for risk assessment being followed at the Vasquez Boulevard/I-70 Superfund Site ("VB/I-70 Site"). We are deeply concerned that your agencies do not appear to be working together to follow the National Contingency Plan ("NCP") with respect to risk assessment and that risk management decisions at this complicated site will suffer as a result. More specifically, it does not appear that your agencies are working in a coordinated fashion with respect to completion of the risk assessment and public health assessment for the site, and it appears extremely likely that these two documents, which should be complementary, may contradict each other.

The NCP allows either EPA or a state to be the "lead agency" in response to a release or threatened release of hazardous substances. ATSDR, as a "support agency" under the NCP, may assist the lead agency with respect to certain tasks. The NCP states that ATSDR is "available to provide technical assistance to the lead federal agency and state and local response agencies on human health threat assessments and analysis, and exposure prevention and mitigation". 40 C.F.R. §300.175(b)(8)(i). ATSDR is also to perform health assessments at NPL sites. 40 C.F.R. §300.400(f). Health assessments "may be used by the lead agency to determine whether response actions should be taken and/or to identify the need for additional studies to assist in the assessment of potential human health effects associated with releases or potential releases of hazardous substances." *Id.* Thus, the NCP establishes a lead-role for EPA in site investigation and remediation, with assistance from ATSDR with respect to clearly defined tasks related to public health issues.



At the VB/I-70 Site, this division of responsibilities between the two agencies does not always appear to be followed, and it frequently appears that one hand does not know what the other is doing. The most recent example was ATSDR's announcement at a meeting on July 20, 2000, that it had decided (without talking to Region VIII) to contract with a section of EPA in New Jersey to collect indoor dust samples at Site residences using a different sampling protocol than that previously used by Region VIII to collect indoor dust samples. The result of this lack of coordination will be two different and very limited sets of data that will be of questionable utility to either agency.

Approximately two years ago, EPA established a workgroup comprised of interested state and local agencies, ATSDR, community representatives, and Asarco. The Workgroup has spent many hours discussing sampling plans, preparation of the baseline risk assessment and the public health assessment, and public health concerns. During the course of these meetings, Asarco has been assured more than once that the risk assessment being prepared by Region VIII would be the only quantitative evaluation of risk performed for the VB/I-70 Site, and that the public health assessment being prepared by ATSDR would be a qualitative evaluation of public health risks. The NCP places responsibility for performance of a site-specific baseline risk assessment solely on the lead agency for a site, which in this case is Region VIII. 40 C.F.R. §300.430(d)(4). The results of the baseline risk assessment are to be used to "help establish acceptable exposure levels for use in developing remedial alternatives in the FS". *Id.* It appears, however, from statements made by ATSDR Representative, David Mellard, at the July Workgroup meeting, that the public health assessment being prepared for the site will re-calculate many aspects of EPA's work in the baseline risk assessment and will include a quantitative risk assessment.

Duplicative work in this area is contrary both to the NCP and to ATSDR's policies. ATSDR guidance recognizes the different purposes of risk assessments and public health assessments: "Deliberate differences exist between ATSDR's health assessments and EPA's risk assessments. The two agencies have distinct purposes that necessitate different goals for their assessments." ATSDR, *Public Health Assessment Guidance Manual*, section 2.3. The *Manual* explains that, "EPA risk assessments are used in risk management decisions to establish cleanup levels . . . and to determine allowable levels of contamination", whereas ATSDR health assessments "are used to determine the public health implications of the site guiding the initiation of follow-up health activities when indicated". *Id.* The *Manual* concludes:

Thus, while a risk assessment conducted under EPA's Remedial Investigation/Feasibility Study (RI/FS) process is used to support the selection of a remedial measure at a site, an ATSDR health assessment is a mechanism to provide the community with information on the public health implications of a specific site, identifying those populations for which further health actions or studies are needed. The health assessment also makes recommendations for

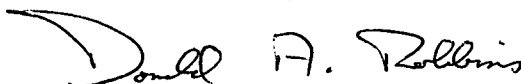
actions needed to protect public health, which may include issuing health advisories.

Id.; see also 42 C.F.R. Part 90. The development of documents at this site appear to be blurring these lines substantially, and consequently EPA's ability to build a clear record for its remedial decisionmaking is being compromised. We understand that there continue to be areas of disagreement among EPA and ATSDR about issues such as exposure assumptions and whether to evaluate risks to pica children, but the time has come, before the draft risk assessment and draft public health assessment are put out for official public comment, for the agencies to either agree upon these issues or for the support agency to defer to the lead agency. It will be difficult for any interested party to have confidence in EPA's remedy selection without a clear administrative record supporting that decision.

As we have previously stated, it is Asarco's intent to work cooperatively with Region VIII at the VB/I-70 Site, but if the procedures and actions taken by EPA are not consistent with the NCP, Asarco will not be in a position to participate voluntarily in any remediation, even as a potentially responsible party with a minority share.

I am available to talk with you at (801) 263-5220 at any time. I look forward to hearing from you about this issue.

Very truly yours,



Donald A. Robbins
Director of Environmental Services

cc: Bonnie Levelle
David Mellard
Workgroup Members
Robert Litle
Linda Larson